

Utah Competitive Solicitation Statute

EXHIBIT 4

DATE 02/20/13

HB 475

54-17-201. Solicitation process required -- Exception.

(1) (a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after February 25, 2005.

(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.

(2) (a) Except as provided in Subsection (3), to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.

(b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:

- (i) a description of the solicitation process the affected electrical utility will use;
- (ii) a complete proposed solicitation; and
- (iii) any other information the commission requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:

- (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) is in the public interest taking into consideration:

(A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the affected electrical utility; and

(F) other factors determined by the commission to be relevant.

(d) Before approving a solicitation process under this section the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(e) As part of its review of a solicitation process, the commission may provide the affected electrical utility guidance on any additions or changes to its proposed solicitation process.

(f) Unless the commission determines that additional time to analyze a solicitation process is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for approval of the solicitation process, the commission shall:

(i) approve a proposed solicitation process;

(ii) suggest modifications to a proposed solicitation process; or

(iii) reject a proposed solicitation process.

(3) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a significant energy resource without conducting a solicitation process if it obtains a waiver of the solicitation requirement in accordance with Section 54-17-501.

(4) In accordance with the commission's authority under Subsection 54-12-2(2),

the commission shall determine:

(a) whether this chapter or another competitive bidding procedure shall apply to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator; and

(b) if this chapter applies as provided in Subsection (4)(a), the manner in which this chapter applies to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator.

Amended by Chapter 374, 2008 General Session

Amended by Chapter 382, 2008 General Session

54-17-501. Waiver of requirement for solicitation or approval.

(1) An affected electrical utility may obtain a waiver of the requirement that it conduct a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the commission determines that waiving the requirement is in the public interest because there exists:

- (a) a clear emergency;
- (b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or
- (c) any other factor that makes waiving the requirement in the public interest.

(2) To obtain a finding from the commission under Subsection (1), the affected electrical utility shall, as soon as practicable after learning of the existence of a circumstance specified in Subsection (1):

- (a) file a verified application with the commission; and
- (b) serve an electronic and paper copy of the verified application, including all associated exhibits and attachments, on each person reflected on a list to be maintained and published by the commission on its Internet website that has requested service of waiver requests and has signed a generic protective order issued by the commission limiting the use of information contained in or attached to a waiver request.

(3) A verified application filed pursuant to Subsection (2) shall:

- (a) identify any waiver requested;
- (b) explain the basis for each waiver requested;
- (c) specify any time sensitivity associated with the verified application;
- (d) explain why the waiver requested is in the public interest; and
- (e) contain other information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Upon receipt of a verified application filed under Subsection (2), the commission shall, before the end of the next business day, provide public notice of a technical conference to be held no sooner than three business days and no later than seven calendar days following the day on which the verified application is filed and served.

(5) (a) At the technical conference held under Subsection (4), the affected electrical utility shall provide adequate support for its verified application and shall respond to questions of the commission, an independent evaluator if one is participating, and any other interested person.

(b) The commission shall prepare and retain a transcript of the technical conference.

(6) No less than three business days and no more than seven calendar days following the technical conference, the independent evaluator and any interested person may file and serve comments concerning the verified application.

(7) The commission shall issue a written decision either granting, granting with conditions, or denying each waiver requested no later than seven calendar days following the deadline for the independent evaluator and any interested person to file comments under Subsection (6).

(8) (a) If confidential or trade secret information is provided or used in the verified application, in the technical conference, in comments filed on the verified

application or otherwise in the process, that information shall be clearly identified by the providing person as confidential and shall be provided on a confidential basis subject to the terms of a protective order issued by the commission.

(b) (i) The commission shall issue a generic protective order to govern access to and use of confidential information in connection with a request for waiver under this part.

(ii) Upon request by the affected electrical utility or any interested person, the commission may issue a supplemental protective order in connection with any verified application.

(c) (i) The generic protective order and any supplemental protective order restrict use of confidential information to the proceeding on the verified application, however, use of the confidential information in the proceeding is not considered a competitive purpose under Subsection (8)(c)(ii).

(ii) The generic protective order and any supplemental protective order shall forbid the use of confidential information for competitive purposes.

(d) An interested person may gain access to and use confidential information in accordance with the terms of a protective order issued by the commission.

(9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

(a) shall take action or schedule proceedings as soon as reasonably practicable in light of the circumstances and urgency demonstrated by the verified application and any subsequent information provided during the process; and

(b) may shorten or lengthen the time frames if the commission determines that changing them is warranted and in the public interest, except that a time frame may not be lengthened solely because an independent evaluator is not available to participate or to complete a recommendation.

(10) If an affected electrical utility is granted a waiver to acquire or construct a significant energy resource in accordance with this section:

(a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant energy resource decision;

(b) any cost recovery that an affected electrical utility seeks in connection with that significant energy resource is subject to a future prudence review by the commission under Subsection 54-4-4(4); and

(c) the waiver grant does not create any presumption that the affected electrical utility's action in acquiring or constructing a significant energy resource was prudent.

(11) (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to have an independent evaluator available to participate in any application for a waiver under this part.

(b) The commission may decline to use an independent evaluator in the consideration of a waiver application if the commission determines the use of an independent evaluator is:

(i) not appropriate under the circumstances;

(ii) not available under terms or conditions the commission considers reasonable; or

(iii) not available to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(c) The validity of an order entered under this part is not affected by:
(i) the unavailability of an independent evaluator; or
(ii) the failure of an independent evaluator to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(12) The commission shall issue a generic protective order as provided in Subsections (2)(b) and (8)(b).

(13) By September 1, 2007, the commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a waiver of the solicitation or approval process consistent with this section.

Amended by Chapter 382, 2008 General Session

54-17-203. Independent evaluator.

(1) (a) The commission shall:

(i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and

(ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.

(b) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Procedures Act, shall make rules setting the qualifications of an independent evaluator.

(2) The commission shall determine the method used to pay the fees and expenses for the independent evaluator which may include:

(a) the payment of a bid fee by bidders to a solicitation; or

(b) (i) requiring the affected electrical utility to pay the fees and expenses; and

(ii) permitting an affected electrical utility to recover the amounts paid under this

Subsection (2)(b).

(3) (a) The independent evaluator may not make the decision as to which bid should be awarded under the solicitation.

(b) The independent evaluator shall:

(i) actively monitor the solicitation process for fairness and compliance with commission rules;

(ii) report regularly to:

(A) the commission; and

(B) others as directed by the commission;

(iii) develop one or more reports addressing:

(A) the solicitation process;

(B) any concerns of the independent evaluator related to the solicitation process;

and

(C) the ultimate results of the solicitation process, including the opinions and conclusions of the independent evaluator;

(iv) provide ongoing input regarding issues, concerns, and improvements in the solicitation process with the objective of correcting ongoing deficiencies in the solicitation process to the following:

(A) the commission;

(B) the affected electrical utility; and

(C) others as directed by the commission;

(v) render an opinion as to whether:

(A) the solicitation process is:

(I) fair; and

(II) in compliance with this part; and

(B) any modeling used by the affected electrical utility to evaluate bids is sufficient;

(vi) testify in any proceeding under Section 54-17-302; and

(vii) perform other functions and provide other input and reports as the commission may direct, including periodic presentations to interested parties regarding the solicitation process.

Amended by Chapter 382, 2008 General Session